

WC 08-19

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of the Joint Application of

Calence Holdings, Inc., Transferor

and

Calence, LLC, Transferee

For Grant of Authority Pursuant to
Section 214 of the Communications Act of 1934,
as amended, and Section 63.04 of the
Commission's Rules to Complete a Transfer of
Control of Calence Holdings, Inc., an Authorized
Domestic Section 214 Carrier, to Calence, LLC

FCC/MELLON

FEB 08 2008

WC Docket No. 08-_____

JOINT APPLICATION

I. INTRODUCTION

A. Summary of Transaction

Calence Holdings, Inc. ("Calence, Inc." or "Transferor") and Calence, LLC ("Calence, LLC" or "Transferee") (collectively, "Applicants"), through their undersigned counsel and pursuant to Section 214 of the Communications Act or 1934, as amended, 47 U.S.C. § 214, and Section 63.04 of the Commission's Rules, 47 C.F.R. § 63.04, respectfully request Commission approval or such authority as may be necessary or required to enable the Applicants to consummate a transaction whereby Calence, Inc. contributed its assets to Calence, LLC, including its Section 214 authority, with Calence, LLC continuing as a non-dominant competitive resale carrier holding Section 214 authority to provide global resale service as well as blanket authority from the Commission to provide interstate

telecommunications services.

Although the Applicants believe that, based on the voting and management structure of Calence, LLC, the transaction that resulted in a change of shareholding and restructuring of Calence, Inc. is not a substantial transfer of control, in an abundance of caution, while this issue continues to be examined by the International Bureau, and in light of an imminent deadline concerning a subsequent transaction in which Calence, LLC is being acquired in its entirety by another entity¹, the parties are submitting this Application in the event the Commission believes otherwise after reviewing the management structure of Calence, LLC. The details of the latter are set forth in Section III below.

Although the proposed transaction will result in a change in the ultimate ownership and control of Calence, Inc. no assignment of authorizations or transfer of assets or customers will occur as an immediate consequence of the proposed transaction. Calence, Inc. will continue to provide service to the existing approximate 191 residential and 65 commercial customers predominantly within a single building in New York City, as described below, pursuant to its authorizations and in accordance with the same rates, terms and conditions as exist pre-merger. Accordingly, this transaction will have no effect on the rates, terms and conditions or service provided to the customers of Calence, Inc. and the merger will be transparent to them.

B. Request for Streamlined Processing

Applicants respectfully submit that this Application is eligible for streamlined

¹ Calence, LLC has entered into an Agreement and Plan of Merger ("Merger Agreement") with Insight Enterprises, Inc. and Insight Networking Services, LLC in which the latter will acquire 100% of the membership interests of Calence, LLC, as described more fully in Sections I(B) and III below and in the Joint Application filed on February 4, 2008 with the International and the Wireline Competition Bureaus seeking approval of the substantial transfer of control for an April 1, 2008 closing.

processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Transferee will have a market share in the interstate, interexchange market of substantially less than ten percent (10%), and the Transferee will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and none of the Applicants (or their Affiliates) are dominant with respect to any service.

Additionally, Applicants note that on January 24, 2008 Calence, LLC and Insight Networking Services, Inc. executed an Agreement and Plan of Merger (the "Merger Agreement") which sets a closing date of March 1, 2008, or if specified conditions, including the requested approval, have not been satisfied, of April 1, 2008. A condition to closing the transaction is the within requested approval. Applicants have attempted to include as much detail in this Application as possible to support rapid processing within the parameters of the Commission's rules, and the Applicants remain willing to submit any additional information so as to facilitate processing.

In support of this Application, Applicants provide the following information:

II. DESCRIPTION OF THE APPLICANTS

A. Calence Holdings, Inc.

Calence Holdings, Inc. is an Arizona corporation, with its principal place of business at 1560 West Fountainhead Parkway, 2nd Floor, Tempe, Arizona 85282. In addition to its information technology ("IT") network solutions and management services, Calence, Holdings, Inc. was a competitive carrier providing resold local, interstate and international telecommunications services to approximately 65 commercial and 191 residential subscribers,

all but one of which are located within a single building, the Time Warner Center, in New York, New York.

B. Calence, LLC

Calence, LLC is a Delaware limited liability company, with its principal place of business at 1560 West Fountainhead Parkway, 2nd Floor, Tempe, Arizona 85282. Calence, LLC continues to operate in every respect as it did as Calence, Inc. The management and day-to-day operation of Calence, LLC is the same as it was as Calence, Inc. Only the non-voting shareholder structure has changed as a result of the contribution of the assets of its AES Division by Avent, Inc. to LLC and of the assets of Calence, Inc. to Calence, LLC, as described below.

C. Section 214 Authorizations

(1) Calence, Inc. holds blanket domestic Section 214 authority to provide interstate telecommunications service pursuant to 47 C.F.R. § 63.01. Calence, Inc. also holds international Section 214 authority to provide global or limited global resale services between the U.S. and international points, granted in IB File No. ITC-214-20050919-00371.

(2) Calence, LLC does not hold any FCC authorizations.

III. DESCRIPTION OF THE TRANSACTION

Calence, LLC is the surviving corporation of an asset contribution by Calence, Inc. and Avnet, Inc. in February 2006. More specifically, effective February 1, 2006, Calence, Inc. (now known as Calence Holdings, Inc.) entered into a transaction with Avnet, Inc., a New York corporation headquartered in Phoenix, Arizona and traded on the New York Stock Exchange, whereby Calence, Inc. changed its name to Calence Holdings, Inc. and contributed its business, and Avnet, Inc. contributed its AES Division, to Calence, LLC, a Delaware limited liability company, which was and is the surviving entity of the combination. In

exchange for contribution of the AES Division of Avnet, Inc., the latter received zero voting membership interests in the LLC and 62.5% non-voting membership interests in the LLC, which are designated as "Class B" non-voting membership interests. Calence, Inc. received 100% of the voting membership interests in the LLC through its 37.5% voting membership interests which are designated as "Class A" voting membership interests. The officers of Calence, LLC are as they were prior to the restructuring, and Calence, Inc. continues to control the Board of Directors, now called a Board of Managers within Calence, LLC. The result is that the management of Calence, Inc. prior to the restructuring continues to control the operation, day-to-day functioning, management, strategic planning and all other operational aspects of Calence, LLC such that control of Calence, Inc. is the same following the combination as it was prior to it.

As set forth in the Operating Agreement of Calence, LLC ("Calence Operating Agreement"), dated December 6, 2006, the management of Calence, LLC "shall be vested exclusively in a committee (the "Board of Managers")" Calence Operating Agreement, Section 5.1. The Board of Managers consists of a maximum of seven Managers: three chosen by holders of Class A units (Calence, Inc.), one chosen by holders of Class B units (Avnet, Inc.), and three "designated by the written consent of Avnet and Calence." Calence Operating Agreement, Section 5.2. The up-to-three additional Board Managers may be designated, if at all, only by the mutual agreement of Calence, Inc. and Avnet, Inc. ("Independent Managers") and must be independent managers, not affiliated with Calence, Inc. or Avnet, Inc. Calence Operating Agreement, Section 5.2(e). The three Calence, Inc. Board Managers are appointed at the absolute discretion of Calence, Inc. with no veto power or input of any nature by Avnet, Inc. The one Avnet, Inc. Board Manager is appointed by Avnet, Inc. with no veto power or input from Calence, Inc.

Since the date of the restructuring on February 1, 2006 through present, Calence, Inc. and Avnet, Inc. have appointed only two Independent Managers. Calence, LLC's Board of Managers thus consists of six members. Three are appointed by Calence, Inc., one is appointed by Avnet, Inc. and two Independent Managers are appointed by agreement of Calence, Inc. and Avnet, Inc. The Chair of the Board of Managers is elected by majority vote. Michael Fong, the Chief Executive Officer of Calence, Inc. and Calence, LLC, is the Chair.

Effectively, Avnet, Inc. made a passive investment in Calence, LLC by contribution of the AES Division of Avnet, Inc. for which Avnet, Inc. received an investment interest in Calence, LLC, exercisable as and when a liquidity event of Calence, LLC may arise. Avnet has no voting rights but it has rights associated with the protection and avoidance of unnecessary taxation of its investment. For example, Class B membership interests receive financial benefits in pari passu with Class A membership interests when liquidity events are realized, such as a dividend declaration, and Class B membership interests are treated pari passu with Class A membership interests with regard to liquidity events such as a sale of Calence, LLC, including the one contemplated presently in the Calence, LLC-Insight Enterprises transaction to close on April 1, 2008. Avnet, Inc. cannot control such events or cause them to happen, but its investment interest is treated pari passu with Class A membership interests if and when Calence, LLC undertakes such action.

Following the consummation of the proposed transaction, Calence, Inc. will continue to offer service with no change in the rates or terms and conditions of service. There will be no interruption or disruption of service to customers, and the transfer of control of Calence, Inc. will be seamless and transparent to customers. Future changes in the rates, terms and conditions of service to Calence, Inc.'s customers, if any, will be undertaken pursuant to the applicable federal and state notice and tariff requirements and Calence, Inc.'s contractual

obligations.

While the Calence Operating Agreement contains non-publication and confidentiality provisions, should the Commission wish to review the entire document, Applicants will forward same electronically with the request that its provisions remain confidential and non-published.

IV. INFORMATION REQUIRED BY SECTION 63.04(a)

Pursuant to Commission Rule 63.04(a), 47 C.F.R. § 63.04(a), Applicants submit the following information in support of their request:

(a)(1) Name, address and telephone number of each Applicant:

Transferor:

Company:	Calence Holdings, Inc.	FRN: 0017364167
Address:	1560 West Fountainhead Parkway Tempe, Arizona 85282	
Telephone:	480-889-9500	
Facsimile:	480-889-9599	

Transferee:

Company:	Calence, LLC	FRN: 0014274815
Address:	1560 West Fountainhead Parkway Tempe, Arizona 85282	
Telephone:	480-889-9500	
Facsimile:	480-889-9599	

(a)(2) Jurisdiction of Organizations:

Transferee: Calence, Inc. is an Arizona corporation, with its principal place of business at 1560 West Fountainhead Parkway, Tempe, Arizona 85282.

Transferee: Calence, LLC is a Delaware limited liability company, with its principal place of business at 1560 West Fountainhead Parkway, Tempe, Arizona 85282.

(a)(3) Correspondence concerning this Application should be sent to:

For Calence Holdings, Inc.:

Joseph Hamilton
General Counsel
Calence, LLC
1560 West Fountainhead Parkway
Tempe, Arizona 85282
480-889-9500 (Tel)
480-212-7439 (Fax)
Joseph.hamilton@calence.com

With copies to:

Judith O'Neill
Greenberg Traurig, LLP
200 Park Avenue
New York, New York 10166
(212) 801-9387 (Tel)
(212) 805-9387 (Fax)
oneillj@gtlaw.com

For Calence, LLC:

Joseph Hamilton
General Counsel
Calence, LLC
1560 West Fountainhead Parkway
Tempe, Arizona 85282
480-889-9500 (Tel)
480-212-7439 (Fax)
Joseph.hamilton@calence.com

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New York, New York 10166
(212) 801-9387 (Tel)
(212) 805-9387 (Fax)
oneillj@gtlaw.com

(a)(4) Following the merger, the following entities will hold, directly or indirectly, a ten percent (10%) or greater interest² in Calence, LLC as calculated pursuant to the Commission ownership attribution rules for wireline and international telecommunications carriers

² Unless otherwise indicated, the ownership interests provided herein represent both equity and voting interests.

Post-Transaction Ownership of Calence, LLC:

Name: Calence Holdings, Inc.
Address: 1560 West Fountainhead Parkway
Tempe, Arizona 85282
Citizenship: United States
Principal Business: Provider of IT solutions and network services and
provider of competitive resale telecoms services
% Ownership: 37.5% of total membership interests which constitutes
100% of all voting interests (Class A)

Name: Avnet, Inc.
Address: 2211 S. 47th Street
Phoenix, Arizona 85034
Citizenship: United States
Principal Business: IT software, hardware and solutions
% Ownership: 62.5% of total membership interests which constitute
0% of all voting interests (Class B)

(a)(5) Applicants certify that no Applicant is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998. *See* 21 U.S.C. § 853a; *see also* 47 C.F.R. §§ 1.2001-1.2003.

(a)(6) A description of the proposed transaction is set forth in **Section III** above.

(a)(7) (i) Calence, Inc. provides competitive resale services to approximately 256 subscribers, all of whom are located in New York, New York.

(ii) Calence, LLC provides competitive resale services to approximately 256 subscribers, all of whom are located in New York, New York.

(iii) Avnet, Inc. does not provide telecommunications services in any state, or outside the United States, nor does it have any subsidiaries or affiliates that provide telecommunications services.

(a)(8) Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. § 63.03. In

particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Transferee (and its Affiliates) will have a market share in the interstate, interexchange market of substantially less than ten percent (10%), and the Transferee (and its Affiliates) will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and none of the Applicants (or their Affiliates) are dominant with respect to any service. In this regard, we note for the Commission's consideration that the Merger Agreement sets a closing date of March 1, 2008, or if specified conditions, including the requested approval, have not been satisfied, of April 1, 2008. A key condition to closing is the approval by the Commission of this application. Applicants have attempted to include as much detail in this application as possible to support rapid processing within the parameters of the Commission's rules, and the Applicants remain willing to submit any additional information.

(a)(9) Transferor does not hold any other authorizations or licenses from the Commission, nor does it have any affiliates or subsidiaries that do. Therefore, no other applications are being filed with the Commission with respect to this transaction, with the exception of related electronic filings with the International Bureau, to which this Application is attached.

(a)(10) No party is requesting special consideration because it is facing imminent business failure.

(a)(11) Not applicable.

(a)(12) Applicants submit that the transaction described herein will serve the public interest. Under new ownership, with the considerable resources and technology of Transferee, Calence, LLC will continue to provide high-quality resale telecommunications services to

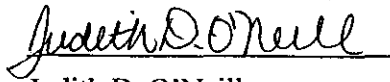
consumers, while being able to expand its customer base and provide new and better services as a result of Transferee's greater financial strength. The transfer of control, therefore, will give Transferee the ability to become a stronger competitor, to the ultimate benefit of consumers. Transferor's services complement Transferee's existing IT solutions and resources, giving the combined companies greater market depth and breadth. As a result, the transaction will strengthen the post-transaction entity's ability to compete with other, much larger providers to the benefit of consumers and the telecommunications and IT markets.

The transfer of control of Calence, Inc. will not result in a change of carrier for customers or any assignment of authorizations. Further, the rates, terms and conditions of services currently provided by Calence, Inc. to its customers will not change as a result of the transaction. The transaction will be seamless and transparent to customers, and Transferor will continue to provide high-quality communications services to its customers without interruption. Future changes in rates, terms and conditions, if any, will be undertaken pursuant to the applicable federal and state notice and tariff requirements.

VI. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be served by the Commission's approval of the transfer of control set forth herein. Accordingly Applicants respectfully request that the Commission grant this Application as expeditiously as possible through its streamlined processing procedures.

Respectfully submitted,



Judith D. O'Neill
Debra McGuire Mercer
Greenberg Traurig LLP
200 Park Avenue
New York, New York 10166
Tel: 212-801-9387
Fax: 212-805-9387
oneillj@gtlaw.com
mercercdm@gtlaw.com

Joseph Hamilton
General Counsel
Calence Holdings, Inc./Calence, LLC
1560 West Fountainhead Parkway
Tempe, Arizona 85282
Tel: 480-889-9500
Fax: 480-212-7439
joseph.hamilton@calence.com

*Counsel for Calence Holdings, Inc. and Calence,
LLC*

Dated: February 8, 2008

Attachment 1

Answer to Question 10

Response to Section 63.18(c) and Section 63.18(d) of the Commission's Rules

§ 63.18(c) Contact Information for Correspondence

Calence Holdings, Inc. (Transferor)

Joseph Hamilton
1560 West Fountainhead Parkway 2nd Floor
Tempe, Arizona 85282
Tel: 480-889-9514
Fax: 480-212-7439
Email: Joseph.Hamilton@calence.com

Calence, LLC (Transferee)

Joseph Hamilton
1560 West Fountainhead Parkway 2nd Floor
Tempe, Arizona 85282
Tel: 480-889-9514
Fax: 480-212-7439
Email: Joseph.Hamilton@calence.com

§ 63.18(d) Section 214 Authority

Calence Holdings, Inc. (Transferor)

Calence Holdings, Inc. (formerly known as Calence, Inc.) has authority under Section 214 of the Communications Act of 1934 to provide interstate service within the U.S. pursuant to the blanket authority for domestic service under Section 214, 47 C.F.R. Sec. 64.01, as well as global resale authority pursuant to ITC 21420050919-00371.

Calence, LLC (Transferee)

Does not hold any other authority from the Commission. It holds a Certificate of Public Necessity and Convenience from the New York PSC.

Answer to Question 11

The ownership of Calence, LLC is as follows: 62.5%, non-voting, Class B membership interests owned by Avnet, Inc., located at 2211 S. 47th Street, Phoenix, Arizona 85034; and 37.5%, voting (100% of the voting interests), Class A membership interests owned by Calence Holdings, Inc., located at 1560 West Fountainhead Parkway 2nd Floor, Tempe, Arizona 85282.

Calence, LLC is the surviving corporation of an asset contribution by Calence Holdings, Inc. and Avnet, Inc. in February 2006.

More specifically, effective February 1, 2006, Calence, Inc. (now known as Calence Holdings, Inc.) entered into a transaction with Avnet, Inc., a New York corporation headquartered in Arizona and traded on the NYSE, whereby Calence, Inc. changed its name to Calence Holdings, Inc. and contributed its business, and Avnet, Inc. contributed its AES Division, to Calence, LLC, a Delaware limited liability company, which was and is the surviving entity of the combination. In exchange for contribution of the AES Division of Avnet, Inc., the latter received zero voting membership interests in the LLC and 62.5% non-voting membership interests in the LLC, which are designated as "Class B" non-voting membership interests. Calence, Inc. received 100% of the voting membership interests in the LLC through its 37.5% voting membership interests which are designated as "Class A" voting membership interests. The result is that the management of Calence, Inc. continued to control the operation, day-to-day functioning, management, strategic planning and all other operational aspects of Calence, LLC such that control of Calence, Inc. was the same following the combination as it was prior to it.

Effectively, Avnet, Inc. made a passive investment in Calence, LLC by contribution of the AES Division of Avnet, Inc. for which Avnet, Inc. received an investment interest in Calence, LLC, exercisable as and when a liquidity event of Calence, LLC may arise. Avnet, Inc. had no voting rights but it has rights associated with the protection and avoidance of unnecessary taxation of its investment. For example, Class B membership interests must receive financial benefits in *pari passu* with Class A membership interests when liquidity events are realized, such as a dividend declaration, and Class B membership interests must be treated *pari passu* with Class A membership interests with regard to liquidity events such as a sale of Calence, LLC. Avnet, Inc. cannot control such events or cause them to happen, but its investment interest must be treated *pari passu* with Class A membership interests if and when Calence, LLC undertakes such action.

Currently, and as a result of the transaction, there are two 10% or greater membership interest holders of Calence, LLC. They are Avnet, Inc. and Calence Holdings, Inc. Avnet, Inc. is a publicly traded New York corporation which specializes in distribution of electronic components, computer products and technology services and solutions. Avnet, Inc. is headquartered in Arizona. Calence Holdings, Inc. is an Arizona corporation.

Neither Calence Holdings, Inc. nor Avnet, Inc. have any telecommunications subsidiaries nor are there any interlocking directors.¹

Answer to Question 13

By this filing, the Applicants notify the Commission of a corporate structuring transaction that resulted in a Section 214 transfer of control of Calence Holdings, Inc.'s authority and a new corporate structure which was and is seamless to the approximately 191 residential subscribers and 65 commercial subscribers (subscribing to a total number of approximately 853 lines) all

¹ Please note that post-closing, Avnet, Inc. appointed one of its corporate officers to the seat that is held by Avnet, Inc. on Calence, LLC's Board of Managers.

located in the Time Warner Building in New York, New York, together with 1 related subscriber in a related location in New York. Please see the more detailed description of the transaction that resulted in the restructuring of Calence Holdings, Inc. to Calence, LLC contained in Answer to Question 11 above. Upon the combination of the assets and liabilities of the AES Division of Avnet, Inc. and of Calence Holdings, Inc. into Calence, LLC, a Delaware limited liability company with its principal place of business in the location same location as Calence Holdings, Inc. in Tempe, Arizona, the above referenced subscribers continued to be serviced seamlessly pursuant to the same terms and conditions, prices, menu of services. The transfer of control was in all aspects transparent to Calence Holding, Inc.'s approximate 191 residential and 65 commercial customers in the Time Warner Building in New York. As noted above in the answer to Question 11, following closing, Calence, LLC continued to operate the same network, same services, using the same operational team and management out of the same offices in Arizona and pursuant to all of the same terms and conditions provided to Calence Holdings, Inc. customers as prior to the restructuring. The transaction is more fully described in the Joint Application for transfer of control submitted on February 8, 2008 to the Wireline Competition Bureau, a copy of which is attached hereto for reference. (See Attachment 2)

The restructuring of the ownership interests was done to allow Calence, LLC to obtain the additional assets of the AES Division of Avnet, Inc., and the considerable resources of Avnet, Inc. so as to make its business stronger and make it a more effective competitor. As a result of the transaction it enhanced Calence, LLC's ability to provide state-of-the-art solutions to its customers and gave it resources to be able to grow its market share and enhance competition.

Answer to Question 20

Applicants respectfully submit that this application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03. This application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Transferee (and its Affiliates) had and continues to have a market share in the interstate, interexchange market of less than ten percent (10%), and Transferee (and its Affiliates) will provide competitive telephone exchange resale services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and none of the Applicants (or their Affiliates) are dominant with respect to any service.

Additionally, Applicants note that this application was not filed in 2006 when the transaction occurred as the parties were not aware or advised of the Commission's requirement of filing for Section 214 Transfer of Control from Calence Holdings, Inc. to Calence, LLC. The Commission's requirements became known to Calence Holdings, Inc. and Avnet, Inc. immediately following the signing of a Merger Agreement on January 24, 2008, in which Calence Holdings, Inc. and Avnet, Inc. committed to sell 100% of Calence, LLC to Insight Enterprises, Inc., a U.S. publicly traded company on the NASDAQ exchange, registered in Delaware. At that time, in preparation of the Section 214 Transfer of Control approval application for the Insight transaction, the oversight was noticed. The closing date required by the Merger Agreement is March 1, 2008, or if specified conditions, including the requested approval, have not been satisfied, April 1, 2008. Thus, in addition to the streamlining process

which applies under the Commission's rules as noted above, we appreciate the Commission's advising us of any additional or other information or clarification it may require at its earliest convenience so that we may be able to bring Calence's filings up to date and meet the closing deadline for the Calence, LLC/Insight transaction. Also, this substantial Section 214 Transfer of Control application is being filed following the substantial Section 214 Transfer of Control application which counsel filed on February 4, 2008, with regard to the Calence, LLC/Insight Enterprises, Inc. transaction noted above, which is the subject of the Merger Agreement.

Although the Applicants believe that, based on the voting and management structure of Calence, LLC, the transaction that resulted in a change of shareholding and restructuring of Calence, Inc. is not a substantial transfer of control, in an abundance of caution, while this issue continues to be examined by the International Bureau, the parties are submitting this Application in the event the Commission believes otherwise after reviewing the management structure of Calence, LLC.